IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

OP.No. 9471 of 2001(C)

PETITIONER:

A.P. ALIKOYA,
TILLER OPERATOR, VILLAGE (DWEEP) PANCHAYATH,
AGATTI ISLAND,
RESIDING AT AMBERPALLY,
AGATTI ISLAND, U.T. OF LAKSHADWEEP.

BY ADV. SRI.SHAFIK M.A,
SRI. M.A. FAYAZ.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY**
   THE SECRETARY TO THE GOVERNMENT OF INDIA,
   MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND
   PENSIONS, NEW DELHI.

2. **THE ADMINISTRATOR,**
   U.T. OF LAKSHADWEEP,
   KAVARATTI.

3. **THE DIRECTOR OF PANCHAYATHS,**
   U.T. OF LAKSHADWEEP,
   KAVARATTI.

4. **THE CHAIRPERSON,**
   VILLAGE (DWEEP) PANCHAYATH,
   AGATTI ISLAND, U.T OF LAKSHADWEP.

O.P. NO. 9471/2001:

5. SRI. NALLAKOYA,
EXECUTIVE OFFICER,
VILLAGE (DWEEP) PANCHAYATH,
AGATTI ISLAND, U.T. OF LAKSHADWEEP.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN.,
SRI.N.ANILKUMAR, ADDL.CGSC.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS. 15171/2001 & 33468/2001 IN O.P. NO. 9471/2001

DISMISSED

12/06/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

EXT.P.1: COPY OF THE CERTIFICATE DTD. 10/04/2000 ISSUED BY THE R.4.

EXT.P.2: COPY OF THE REPRESENTATION DTD. 08/01/2001 SUBMITTED BEORE THE R.4.

EXT.P.3: COPY OF THE REPRSENTATION DTD. 01/01/2001 SUBMITTED BEFORE THE R.3.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 17/01/2001 SUBMITTED BEFORE THE R.3.

EXT.P.5: COPY OF THE REPRESENTATION DTD. 21/01/2001 SUBMITTED BEFORE THE R.3.

EXT.P.6: COPY OF THE O.M. NO. 51016/2/90-ESTT (C) DTD. 10/09/93 ISSUED BY THE R.1.

EXT.P.7: COPY OF THE NOTIFICATION F. NO. 2/3/98-VDP DTD. 22/06/2001 ISSUED BY THE R.4.

RESPONDENT'S EXHIBITS:

EXT.R2.A: COPY OF THE ORDER F. NO. 4/2/92-PCS DTD. 28/01/92 ISSUED BY THE R.2.

EXT.R2.B: COPY OF THE ORDER F. NO. 1/16/97-DOP DTD. 09/04/97 ISSUED BY THE R.3.

EXT.R2.C: COPY OF THE CIRCULAR F. NO. 2/1/96-DOP/714 DTD. 10/08/98 ISSUED BY THE R.3.

EXT.R2.D: COPY OF THE CIRCULAR F. NO. 2/1/96-DOP.VOL.II DTD. 16/01/2001 ISSUED BY THE R.3.

EXT.R2.E: COPY OF THE LETTER F. NO. 4/2/99-VDP DTD. 25/01/2001 FROM THE R.4. TO THE R.3.

EXT.R2.F: COPY OF THE LAKSHADWEEP PANCHAYATS (SERVICE) RULES, 1997.

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.9471 of 2001

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Dated this the 12th day of June, 2007.

JUDGMENT

Going by the counter affidavit of respondents 2 and 3, the petitioner was engaged under the Wage Employment Programme by the then Island Council, Agatti on 26-12-1995. It appears that the petitioner had been carrying out the job of Power Tiller Operator. With the passage of time, Island Council activities have been taken over by the Village (Dweep) Panchayat. According to the petitioner, for no rhyme or reason, he was disengaged. Pending this writ petition, with no interlocutory orders at the time of admission, CMP No.33468 of 2001 was filed and an order of stay was passed on 17-7-2001 thereby bringing to halt a proposal, as per Ext.P7, for recruitment of a temporary hand as Power Tiller Operator.

2. The gist of the contentions and submissions at the time of arguments on behalf of the petitioner is that, a temporary hand cannot be removed from service

to bring in yet another temporary hand and even if any extreme case of a temporary hand being unqualified, his continuance in service could also be permitted on principles of livelihood, though it is nobody's contention here that the petitioner is unqualified. But, then the principles of retaining a temporary hand until being substituted by a permanent hand, would, in my view, have complete application only in cases where the question relates to permanent posts or permanent vacancies. If the requirement of a particular post is itself not of a permanent nature, there is no point in treating that as a permanent post for the purpose of applying the principle that, only a permanent hand could replace a permanent hand. In the case of a Power Tiller Operator, the requirement of its operation is only during the continuance of its status as one that can be operated. However, as a necessary corollary, it does not mean that, one has to assume that the deployment of Power Tiller Operator would be a temporary affair in a Panchayat or under a Development Council, having regard to the growth of the society.

3. In the aforesaid circumstances, I find that, ends of justice would only require that, the petitioner is given a higher bench mark by taking into consideration any service he has put in as a Power Tiller Operator on temporary basis, in case the respondents intend to engage temporary Power Tiller Operators.

Therefore, this writ petition is disposed of directing that, if the respondents require to employ a Power Tiller Operator, a competition shall be conducted on the basis of a notification, within a period of three months from now and if the petitioner applies for being considered, his due contribution as a temporary Power Tiller Operator shall also be reckoned in his favour for deciding the comparative merit, if required by relaxation of age.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.9471 of 2001

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JUDGMENT

Dated:12-6-2007